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MEMO

RECEIVED

TO: Ravalli County Commissioners

FROM: George H. Corn

A handwritten signature in dark ink, appearing to be "GHC", written over the printed name "George H. Corn".

DATE: February 2, 2007

FEB 05 2007
Ravalli County Commissioners

RE: Pogo Pumps, Inc. v. Ravalli County Airport Advisory Board, et al.
DV 07-119

Dear Commissioners,

I have just received the attached Complaint and demand for jury trial in the above-entitled matter. The suit had been filed but not yet served. Plaintiff's attorney will be contacting us. By copy of this memo, I am asking Keith Stapley of MACO claims for a defense. Keith, I look forward to hearing from you in this matter.

Thank you.

GHC/jw

Enclosure

cc: Keith Stapley, Claims Manager, MACO

Dustin M. Chouinard
MARKETTE LAW OFFICE
601 South First Street
P.O. Box 515
Hamilton, Montana 59840
(406) 363-1110

Attorneys for Plaintiff

FILED JAN 23 2007

SHIRLEY E. FAUST, CLERK
By Angela M Phillips

RECEIVED

FEB 01 2007

Ravalli County Attorney's Office

**MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY,
MONTANA**

Pogo Pumps, Inc., a Montana Corporation,
and Mark Fournier,

Plaintiffs,

vs.

The Ravalli County Airport Advisory Board,
The Ravalli County Commissioners,
Ravalli County, a political subdivision of
the State of Montana, and Northstar
Aviation, Inc., a Montana Corporation
Defendants.

CAUSE NO. DV-07-119

Dept. No. **DEPT. No. 2**

Robert L. Deschamps, III

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

The Parties

1. Pogo Pumps, Inc., is a corporation existing under the laws of the State of Montana. Pogo Pumps Inc. conducts business and is a leaseholder at the Ravalli County Airport. Mark Fournier is a principle of Pogo Pumps, Inc., and also conducts business at the Ravalli County Airport.

2. Pogo Pumps, Inc. has assumed the assets of Big Sky Fuels, Inc., a corporation

existing under the laws of Montana, which formerly conducted business at the Ravalli County Airport.

3. Defendant Ravalli County Airport Advisory Board is governed and controlled by Defendants Ravalli County Commissioners, which consists of government officials acting in their official capacities in and for the County of Ravalli, State of Montana. Ravalli County is a duly constituted political subdivision of the state of Montana. With respect to each of the allegations contained herein, actions attributed to the county are actions taken under authority of law by employees, agent and representatives of Ravalli County.

5. Defendant Northstar Aviation, Inc., is a corporation existing under the laws of the State of Montana.

6. The identities of Defendants John Does One through Ten and Corporations A through J, are as of yet unknown. However, based on the allegations set forth below, said Defendants are named herein to the extent addition unnamed defendants may exist.

General Allegations

7. Plaintiffs and Defendant Northstar Aviation are similarly situated in that they are now, or have been in the past, lease holders at the Ravalli County Airport. past.

8. Pursuant to the Federal Aviation Administration Grant Assurance, authority over governance of the airport, including authority to award leases and the responsibility to enforce all applicable federal, state and local regulations have been delegated to Ravalli County, Montana, and in turn the Ravalli County Commissioners and the Ravalli County Airport Board.

Count I – Civil Conspiracy

9. By this reference, Plaintiff's incorporate each and every allegation contained in paragraphs 1 through 7, as if fully set forth.

10. Some or all Defendants share a stated objective of unfairly favoring and preserving the interests of Defendant Northstar Aviation to the detriment of Plaintiff.

11. Some or all Defendants agreed to pursue their objective utilizing any means at their disposal, legal or illegal.

12. In pursuing their objective, Defendants committed unlawful acts which, as a direct and proximate result, caused special and general damages to be suffered by Plaintiff. Specifically, some or all Defendants participated in and knew of the following acts:

- a. Commencing in the year 2002 and continuing to this date, the Ravalli County Airport Board and the some or all of the Ravalli County Commissioners (the "Commissioners") have unlawfully, unreasonably and arbitrarily favored Northstar Aviation to the detriment of similarly situated parties, namely, Plaintiff.
- b. Without following established procedures and without public meeting, said Defendants have awarded Northstar Aviation an airport lease. In spite of established procedures, and representations to Plaintiff that it would be offered the lease, said lease was awarded in a manner contrary to established procedures and contrary to representations made to Pogo Pumps.
- c. With notice that Northstar Aviation was in violation of federal regulations

regarding fuel stations, and with knowledge that Northstar Aviation has had at least one previous fuel spill, said Defendants have allowed Northstar Aviation to continue to operate its fuel station, endangering the health and safety of the general public, while at the same time holding Plaintiffs and other similarly situated parties to standards which exceed applicable local, state and federal regulations. Moreover, said Defendants, in the past, required Plaintiffs to remove fuel tanks which were not approved by the fire marshal, but have allowed Northstar Aviation to continue use of its tanks, which have not been approved by the fire marshal. Said Defendants required Plaintiffs to install concrete spill pads for its self service fuel stations, restricted the size of its fuel tanks, all while allowing and directly supporting Northstar Aviation and its operation of a fuel station with unapproved fuel tanks and no spill pad.

- d. Said Defendants altered Northstar Aviation's lease and changed its fee schedule, essentially providing public support to a private entity in violation of the Montana Constitution by reducing and/or waiving lease payments for Northstar Aviation, while holding Plaintiffs to a higher standard and requiring full payment.
- e. Said Defendants unlawfully conditioned approval of a private septic system upon said a private entity providing a septic hook up for Northstar Aviation.
- f. Said Defendants have failed to enforce local, state and federal regulations

as to Northstar Aviation in that Northstar Aviation has been allowed to continuously ignore the Defendants instruction to reclaim its abandoned septic system.

- g. Said Defendants approved a fuel system lease to Northstar Aviation even though Northstar Aviation's existing system was not in compliance with local, state and federal regulations, thereby allowing a public nuisance to persist.
- h. In allowing a public nuisance to persist which also endangers water quality and the general state of the environment, said Defendants have violated Plaintiffs', as well as the general public's, right to a clean environment as provided for in the Montana Constitution.
- i. Said Defendants have arbitrarily or intentionally awarded existing aircraft and automobile parking spaces to Northstar Aviation in such a manner as to favor and support the competitive interests of Northstar Aviation to the detriment of Plaintiffs. Moreover, said Defendants have altered the parking spaces and reassigned spaces to Northstar Aviation, while at the same time requiring Plaintiffs to meet certain conditions before allowing utilization of parking spaces.
- j. In addition, Defendant Ravalli County Airport Advisory Board has repeatedly unlawfully met in secret without public notice with the purpose of making decisions without public comment or predetermining issues without public comment. During secret meetings, the Board has taken

actions or agreed to take actions at public meetings which are adverse to Plaintiffs.

- k. In November of 2006, the Board, after meeting in secret on at least two occasions, began to take action with the specific intent of harming Plaintiffs Pogo Pumps. Specifically, the Board arbitrarily stated that Plaintiffs Pogo Pumps was not authorized to sell fuel from a truck on the airport full service, however the Board's position is not supported by law or regulations.
- l. Further, the Board has consistently and repeatedly sought to adopt certain policies regulations which are arbitrary and capricious; moreover, such policies appear designed specifically to harm Plaintiffs.
- m. Moreover, while failing to hold Northstar Aviation to any lawful standards, the Board has repeatedly delayed and refused to respond to Plaintiffs' lawful requests for action and approval.

13. Each of the foregoing acts constitutes a violation of the Plaintiffs' civil rights as provided for by state and federal statute and as provide for by the Montana and Federal constitution. Moreover, the acts constitute explicit favoritism and support of a private business, all to the detriment of the named Plaintiffs.

14. As a direct and proximate result of Defendants' actions, Plaintiffs' have suffered general and special damages.

Count II—Public Nuisance

15. By this reference, Plaintiffs's incorporate each and every allegation contained in

paragraphs 1 through 12, as if fully set forth.

16. The Defendants have knowingly created and/or allowed a condition which endangers the safety and/or health and is offensive to the senses to persist. Specifically, Defendant Northstar Aviation created, and the Commissioners have allowed continue, a public nuisance, in that Northstar Aviation has used and has been allowed to continue to use fuel tanks which are not in compliance with federal, state and local regulations.

17. As a result, Plaintiffs specifically and the general public have been harmed and will continue to be harmed until Northstar is forced to comply with federal, state and local regulations.

18. As a result, Plaintiffs are entitled to and request the Court issue an order of abatement as provided for in section 27-30-103, MCA preventing Northstar Aviation from operating a fuel station until it comes into compliance.

Count III–Violation of Civil Rights

(Violation of Civil Rights under Section 42 U.S.C.A. 1983)

19. By this reference, Plaintiffs's incorporate each and every allegation contained in paragraphs 1 through 18, as if fully set forth..

20. Defendants have arbitrarily, capriciously, violated local, state and federal law and regulations, as well as Plaintiffs' civil rights.

21. Defendants have acted arbitrarily and capriciously in refusing to follow the law and in refusing Plaintiffs' attempts to cure the situation. Plaintiffs was simply told to "stand in line" to sew Defendants.

22. In so doing, Defendants have acted to deprive Plaintiffs of rights secured and

provided under the United States Constitution and federal law.

23. Under section 42 U.S.C. §1983, Plaintiffs is entitled to damages for the injuries cause by such violations of their civil rights.

Count IV—Inverse Condemnation and Unlawful Taking

24. By this reference, Plaintiffs incorporate each and every allegation contained in paragraphs 1 through 23, as if fully set forth.

25. By its actions, Defendants have sought to deprive Plaintiffs of its property without just compensation in violation of Article II, section 29, Montana Constitution. As a result, Plaintiffs is entitled to compensation and damages.

Count V—Intentional Interference with Property Rights

26. By this reference, Plaintiffs incorporate each and every allegation contained in paragraphs 1 through 25 as if fully set forth..

27. In doing each of the acts alleged above, Defendants have interfered with Plaintiffs's right to peaceful and quiet enjoyment of their property, and such interference has been done willfully, maliciously and with a reckless and spiteful disregard for Plaintiffs's rights.

28. These intentional acts have resulted in injury and damage to Plaintiffs, for which it is entitled to compensation.

29. In addition, for such willful, malicious and repeated acts, Plaintiffs are also entitled to punitive damages in an amount to be proven at trial.

Count VI—Negligent Interference with Property Rights

30. By this reference, Plaintiffs's incorporate each and every allegation contained in paragraphs 1 through 29, as if fully set forth.

31. In doing each of the acts alleged above, Defendants have been negligent and have interfered with Plaintiffs's right to peaceful and quiet enjoyment of its property.

32. Such negligence and negligent interference has resulted in injury and damage to Plaintiffs, for which it is entitled to compensation.

Count VII–Negligence

33. By this reference, Plaintiffs's incorporate each and every allegation contained in paragraphs 1 through 32, as if fully set forth.

34. In doing each of the things alleged above, Defendants have administered local, state and federal laws and regulation in a negligent fashion and with disregard for the injury to its citizens.

35. Such negligence has resulted in injury and damage to Plaintiffs, for which they are entitled to compensation.

Count VIII–Interference with Prospective Economic Advantage

36. By this reference, Plaintiffs's incorporate each and every allegation contained in paragraphs 1 through 35, as if fully set forth.

37. Either by design or by their negligence, Defendants have interfered and jeopardized Plaintiffs' economic opportunities and advantages.

38. As a direct and proximate result of Defendants' actions, Plaintiffs have suffered economic damages which approach or exceed one million dollars (\$1,000,000.00).

WHEREFORE, Plaintiffs pray for judgment as follows:

1. That the Court issue and order of abatement preventing Northstar Aviation from operating a fuel station until it comes into compliance with all federal, state and

local regulations.

2. That the Court award Plaintiffs damages against Defendants in an amount to be proven at trial;
3. That the Court award Plaintiffs their costs of suit and attorney's fees as provided for and allowed by law.
4. For such other and further relief as the Court deems just and appropriate.

DATED this 16th day of January, 2007.

MARKETTE LAW OFFICE
Attorneys for Plaintiffs

By: _____

Dustin M. Chouinard

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on all issues so triable.

DATED this 16th day of January, 2007.

MARKETTE LAW OFFICE
Attorneys for Plaintiffs

By: _____

Dustin M. Chouinard